

1 MICHAEL N. WESTHEIMER, State Bar No. 178938  
2 michael.westheimer@ogletreedeakins.com  
3 RACHEL J. MOROSKI, State Bar No. 286805  
4 rachel.moroski@ogletreedeakins.com  
5 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
6 Steuart Tower, Suite 1300  
7 One Market Plaza  
8 San Francisco, CA 94105  
9 Telephone: 415.442.4810  
10 Facsimile: 415.442.4870  
11  
12 Attorneys for Defendant  
13 GE BETZ, INC.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ROBERT ROMERO, an individual,

Plaintiff,

v.

GE BETZ, INC.; DOES 1 through 50,  
inclusive,

Defendant.

Case No. 2:16-cv-01356-FMO-JCx

**DEFENDANT GE BETZ, INC.'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO COMPEL  
ARBITRATION**

Hearing Date: June 16, 2016  
Time: 10:00 a.m.  
Courtroom: 22 – 5<sup>th</sup> Floor  
Judge: Hon. Fernando M. Olguin

Complaint Filed: January 25, 2016  
Trial Date: April 4, 2017

1    **I. INTRODUCTION**

2    In the instant action, Robert Romero (“Plaintiff”) brings nine individual wage  
 3    and hour claims against his current employer, GE Betz, Inc. (“GE Betz” or “the  
 4    Company”). Plaintiff’s claims should not proceed in this Court because they are  
 5    subject to a binding arbitration agreement.

6    Plaintiff agreed that his employment was subject to the Company’s Alternative  
 7    Dispute Resolution Procedure (“ADR Procedure”), which expressly requires him to  
 8    submit his claims at issue in this action to binding arbitration. In January 2011,  
 9    Plaintiff affirmatively acknowledged that his employment was subject to the ADR  
 10   Procedure (including certain amendments that were implemented at that time),  
 11   confirming he is bound by the ADR Procedure as a condition of his employment  
 12   with the Company.

13   The Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.*, mandates that the  
 14   ADR Procedure is to be enforced according to its terms. *Rent-A-Center, West, Inc.*  
 15   *v. Jackson*, 130 S.Ct. 2772, 2776 (2010). Accordingly, GE Betz requests that the  
 16   Court order Plaintiff to comply with the ADR Procedure and submit his claims to  
 17   binding arbitration in lieu of further proceedings in this Court.

18   **II. STATEMENT OF FACTS**

19   **A. GE Betz’s Business**

20   Plaintiff described GE Betz in his Complaint as: “in the business of providing  
 21   water treatment services to industry, including providing water treatment services to  
 22   the water used at PG&E’s operations at the Diablo Canyon Nuclear Power Plant in  
 23   Avila Beach, California . . . and providing water treatment services to Phillips 66 at  
 24   the Phillips 66 Santa Maria Oil Refinery.” (Complaint, ¶ 10.)

25   **B. The 2010 ADR Procedure**

26   The 2010 ADR Procedure provides in relevant part that:

27   **Overview:**

28   [The Procedure] is a structured dispute resolution procedure

1 that consists of two internal levels of review followed by, if  
 2 necessary and applicable, outside mediation (Level III) and  
 3 arbitration (Level IV). . . The levels of Solutions are in a logical  
 4 sequence, and employees must complete each level of the  
 5 process before proceeding to the next level.

6 **Levels I, II and III:**

7 At Levels I and II, an employee and the management team meet  
 8 in an attempt to address the employee's concern. If the  
 9 employee is not satisfied with the outcome of Levels I and II,  
 10 and the concern is a Covered Claim, the employee may submit  
 11 the claim to Level III. Similarly, if the Company has a Covered  
 12 Claim against an employee, it would be submitted initially at  
 13 Level III. At Level III, an external mediator helps the  
 14 employee and the Company open lines of communication in an  
 15 attempt to facilitate resolution.

16 **Level IV – Arbitration:**

17 If there is no resolution at Level III and the party wishes to  
 18 pursue the concern, the next step is Level IV arbitration. At  
 19 Level IV, an external arbitrator provides the employee and the  
 20 Company with a binding decision on the merits of the Covered  
 21 Claim(s). Both mediation and arbitration under Levels III and  
 22 IV will be administered by a nationally recognized **dispute**  
 23 **resolution organization ('DRO')**. Employees may obtain  
 24 information regarding which DRO has been designated to  
 25 handle proceedings at Level III and IV and the DRO's rules  
 26 governing such proceedings from the Solutions Administrator  
 27 or the local HR manager.

28 **Covered Claims:**

29 Covered Claims include all claims that arise out of or are  
 30 related to an employee's employment or cessation of  
 31 employment (whether asserted by or against the Company),  
 32 where a court or agency in the jurisdiction in question would  
 33 otherwise have the authority to hear and resolve the claim under  
 34 any federal, state or local (e.g. municipal or county) statute,  
 35 regulation or common law.

36 **Discovery:**

37 Either party may seek from the other party discovery of the  
 38 types described below to the extent relevant to claims or  
 39 defenses before the arbitrator. The arbitrator shall have the  
 40 authority to modify the discovery guidelines . . . in  
 41 consideration of the interests of simplicity and expedition of  
 42 arbitration balanced against value of the information in  
 43 establishing a claim or defense.

1                   **Scope of Award:**

2                   The arbitrator shall interpret and apply the law of remedies of  
3                   the state or the federal circuit, or both, in which the claim arose,  
4                   or the applicable law pursuant to any contractual agreement.

5                   Except as provided by this procedure . . . , the arbitrator may  
6                   grant any remedy or relief that would have been available had  
7                   the claim been asserted in court.

8                   (Declaration of Jennifer Kozak in Support of Motion to Compel Arbitration [“Kozak  
9                   Decl.”], **Exhibit B.**)

10                  **C. The 2015 ADR Procedure**

11                  On November 1, 2015, the Company made further amendments to the ADR  
12                  Procedure to make it more user-friendly for employees. Among other things, the  
13                  2015 amendments added reference to Executive Order 13673 to the description of  
14                  Excluded Claims; modified the selection process for mediators and arbitrators to  
15                  increase the likelihood that the selection would be by mutual agreement of the  
16                  employee and the Company rather than by the DRO that administers these processes;  
17                  and clarified that employees can discuss the substance of their covered claims with  
18                  colleagues. (Kozak Decl., **Exhibits F-G.**)

19                  **D. Plaintiff’s Employment with GE Betz**

20                  Plaintiff currently works at GE Betz as a Field Service Representative in Avila  
21                  Beach, California. On January 9, 2011, Plaintiff expressly acknowledged that he  
22                  reviewed the 2010 version of the ADR Procedure and agreed to be bound by its  
23                  terms. (Kozak Decl., **Exhibit C.**)

24                  In November 2015, the Company amended the ADR Procedure to make it  
25                  more user-friendly. (*See infra*, Section II(C).) The Company gave employees  
26                  numerous opportunities to review and acknowledge the 2015 amendments prior to  
27                  implementing them, but advised employees: “The modifications will go into effect  
28                  on November 1, 2015, whether or not you have formally acknowledged.” (Kozak  
                 Decl., **Exhibits D-E.**)

                  ///

1                   **E. Plaintiff Filed this Lawsuit in Violation of the ADR Procedure**

2                   In disregard of his agreement to be bound by the ADR Procedure, Plaintiff  
 3 initiated this lawsuit against the Company by filing a court action on January 25,  
 4 2016. His Complaint asserts nine claims for relief against the Company alleging  
 5 violations of the California Labor Code, Industrial Welfare Commission (“IWC”)  
 6 Wage Orders and the Fair Labor Standards Act. (See Complaint, docket # 1-1.)  
 7 Plaintiff’s claims all arise out of his employment with the Company, and therefore  
 8 are subject to the ADR Procedure.

9                   **F. GE Betz’s Demand for Arbitration and Meet and Confer Efforts**

10                  On March 8, 2016, the Company’s counsel contacted Plaintiff’s counsel to  
 11 meet and confer regarding the substance of this motion. The Company’s counsel  
 12 explained that Plaintiff’s claims are subject to an arbitration agreement and requested  
 13 that he dismiss his state court action and resolve his claims through the Company’s  
 14 ADR Procedure. (Declaration of Rachel J. Moroski [“Moroski Decl.”], **Exhibit A**.)

15                  On March 16, 2016, the Company’s counsel and Plaintiff’s counsel discussed  
 16 the substance of the anticipated motion to compel arbitration by telephone.  
 17 Plaintiff’s counsel advised the Company’s counsel that he would consider submitting  
 18 Plaintiff’s claims to arbitration if the Company produced Plaintiff’s acknowledgment  
 19 of the ADR Procedure. (Moroski Decl., ¶ 3.)

20                  On March 25, 2016, the Company produced Plaintiff’s acknowledgment of the  
 21 2010 ADR Procedure. The acknowledgment demonstrates that Plaintiff received the  
 22 Company’s procedures governing arbitration and agreed to be bound by them. The  
 23 Company’s counsel advised Plaintiff’s counsel that, absent a stipulation, the  
 24 Company would file a motion to compel arbitration in compliance with Central  
 25 District Local Rule 7-3. (Moroski Decl., **Exhibit B**.)

26                  As of the date of the filing of this motion, Plaintiff’s counsel has not advised  
 27 the Company whether he will stipulate to submit Plaintiff’s claims to arbitration.  
 28 Accordingly, Defendant had no choice but to file this motion.

### III. ARGUMENT

**A. Plaintiff's Claims Are Subject to a Binding Arbitration Agreement and He Must be Compelled to Arbitrate Them.**

Plaintiff expressly agreed to be bound by the 2010 ADR Procedure, which required him to submit his claims to arbitration. While Plaintiff did not formally acknowledge the 2015 amendments to the ADR procedure, he implicitly agreed to be bound by it because the Company provided him with the 2015 amendments and advised him that they would take effect regardless of whether he formally acknowledged them.

The ADR Procedure is valid and enforceable, either pursuant to the 2015 amendments that Plaintiff implicitly acknowledged, or in the alternative, but the 2010 policy that Plaintiff expressly acknowledged. In either circumstance, Plaintiff must be compelled to arbitration.

## **1. The Federal Arbitration Act Mandates Enforcement of the Arbitration Agreement in the ADR Procedures.**

The applicable law for determining whether this case should be sent to arbitration is the FAA, *supra*, 9 U.S.C. § 1, *et seq.* *Aviation Data, Inc. v. American Express Travel Related Services Company, Inc.*, 152 Cal. App. 4th 1522, 1534-35 (2007). The FAA governs the validity of arbitration agreements and evinces a strong federal policy favoring arbitration. *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1745 (2011); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (“Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements”); *In re Thorpe Insulation Co.*, 671 F.3d 1011, 1020 (9th Cir. 2012). Under the FAA, courts must compel arbitration in disputes covered by a legally binding arbitration agreement. *Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Courts must resolve any doubts concerning arbitrability in favor of arbitration. *Moses*, 460 U.S. at 24-25.

1        In deciding whether to compel arbitration under the FAA, a court's role is  
 2 limited to: "determining (1) whether a valid agreement to arbitrate exists and, if it  
 3 does, (2) whether the agreement encompasses the dispute at issue." *Cox v. Ocean*  
 4 *View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (internal quotation marks  
 5 omitted). Here, GE Betz has a valid and enforceable ADR Procedure to which  
 6 Plaintiff agreed to be bound. His claims are covered by the ADR Procedure, so he  
 7 must be compelled to arbitrate them in lieu of proceeding in this Court.

8            **2. Plaintiff's Electronic Signature is Legally Binding.**

9        Under both federal and California law, Plaintiff's electronic signature on the  
 10 2010 ADR Procedure has the same force and effect as a hand-written signature.  
 11 Both federal and California law provide that agreements may not be denied legal  
 12 effect because they are in electronic form or have electronic signatures. 16 U.S.C. §  
 13 7001(a) provides that "a signature, contract or other record" relating to a transaction  
 14 in or affecting interstate commerce "may not be denied legal effect, validity, or  
 15 enforceability solely because it is in electronic form." 15 U.S.C. section 7001(a)(1).  
 16 With respect to electronic signatures, the statute provides that "a contract relating to  
 17 such transaction may not be denied legal effect, validity, or enforceability solely  
 18 because an electronic signature or electronic record was used in its formation. *Id.* at  
 19 § 7001(a)(2).

20        Similarly, California Civil Code section 1633.7 provides in relevant part that  
 21 "[a] record or signature may not be denied legal effect or enforceability solely  
 22 because it is in electronic form," and that "[a] contract may not be denied legal effect  
 23 or enforceability solely because an electronic record was used in its formation." CIV.  
 24 CODE § 1633.7(a)-(b); *see Chau v. EMC Corp.*, No. C-18-04806-RMW, 2014 WL  
 25 842579, \*4 (N.D. Cal. Feb. 28, 2014) (finding that an employee's electronic  
 26 signature on an employment agreement with an arbitration provision was valid where  
 27 the employee checked "yes" in acknowledging that an electronic signature is as valid  
 28 as a signature by hand); *Tagliabue v. J.C. Penney Corp.*, No. 1:15-cv-01443-SAB,

1 2015 WL 8780577, at \*\*2-3 (E.D. Cal. Dec. 15, 2015) (declaration of human  
2 resources employee sufficient to authenticate electronic signature).

3 **3. The ADR Procedure Provides a Fair Process for Resolving  
4 Plaintiff's Claims Through Arbitration.**

5 Plaintiff has no basis for refusing to submit his claims to arbitration, because  
6 he expressly agreed to be bound by the 2010 ADR Procedure and implicitly agreed  
7 to be bound by the 2015 amendments to the ADR Procedure. *Craig v. Brown &*  
8 *Root, Inc.*, 84 Cal.App.4th 416, 421-422 (employee's consent may be implied from  
9 his continued employment after the unilateral imposition of an arbitration agreement  
10 by the employer). The ADR Procedure (both the 2010 policy and the 2015  
11 amendments) provides fair processes for resolving Plaintiff's claims. (Kozak Decl.,  
12 **Exhibits B, F-G.**)

13 The ADR Procedure provides for resolution before a DRO such as the  
14 American Arbitration Association ("AAA"), with GE Betz paying all fees and  
15 expenses unique to the arbitration, including Plaintiff's time spent arbitrating his  
16 claims. The Procedure affords the employee sufficient discovery to pursue his or her  
17 claims and affords the arbitrator the same power and authority as a court to grant any  
18 remedy or relief that would have been available had the claim been asserted in court.  
19 (Kozak Decl., **Exhibits B, F-G.**)

20 In light of the foregoing, GE Betz respectfully requests that the Court compel  
21 Plaintiff to submit his claims for resolution in accordance with the ADR Procedures.

22 **IV. CONCLUSION**

23 For each of the above reasons, GE Betz respectfully requests that the Court

24       ///

25       ///

26       ///

27       ///

28       ///

1 dismiss Plaintiff's claims and compel Plaintiff to submit them to arbitration in  
2 compliance with the ADR Procedure.

3 DATED: May 10, 2016

OGLETREE, DEAKINS, NASH, SMOAK &  
4 STEWART, P.C.

5 By: /s/ Rachel J. Moroski

6 MICHAEL N. WESTHEIMER  
7 RACHEL J. MOROSKI

8 Attorneys for Defendant  
9 GE BETZ, INC.

10 24019681.1

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28